

**IN THE HIGH COURT OF UTTARAKHAND, AT
NAINITAL.**

Criminal Appeal No. 152/2006

(Old No. 629 of 1986)

Atma Ram S/o Rehlu Mal,
R/o Village and Post Office
Badhai Kalan, P.S. Charthawal,
District Muzaffarnagar Appellant.

Versus

State of U.P. .. Respondent.

Sri Lalit Miglani, holding brief of Sri Pankaj Miglani,
learned counsel for the appellant.

Sri Arvind Vashist, learned Standing Counsel for the
C.B.I./State.

Dated: November 16, 2007

Hon'ble B.C. Kandpal, J.

This criminal appeal arises out against the judgment and order dated 13.2.1986 passed by Special Judge, Anti-Corruption, U.P. (East) Dehradun, in C.B.I. Case No. 7 of 1984 convicting the accused/appellant U/S 409 I.P.C. and sentencing him to undergo three year's R.I. and to pay a fine of Rs.12,000/- and in default of payment of fine, to undergo simple imprisonment for one year and also convicting the appellant U/S 5(1)(C) read with Section 5(2) of the Prevention of Corruption Act and sentencing him to one year's R.I. and to pay a fine of Rs. 2000/-, failing which to undergo S.I. for two months. The substantive sentences were to run concurrently.

2- Briefly stated the prosecution case is that accused Atma Ram was posted as extra departmental Post Master at Post Office Badhai

Kalan, District Muzaffarnagar during the period from January, 1983 to May 1983. As it was a single handed small branch, the accused dealt with the financial matters also. He was required to receive the amount of deposits from the various depositors for being deposited in their respective Savings Bank Accounts. One Ravinder Kumar Singh deposited Rs.1000/- on 25.1.1983, Rs. 600/- on 30.3.83, Rs. 1000/- on 2.4.83 and Rs. 600/- on 15.4.83 and handed over these amounts to the accused Atma Ram for being credited in his S.B. Account No. 655871. Another account-holder Udai Vir Singh also entrusted to the accused Rs. 5000/- on 7.1.83, Rs. 300/- on 5.2.83, Rs. 1020/- on 10.4.83 and Rs. 1000/- on 7.5.83 for being deposited in his Savings Bank Account No.655872. The accused received all these amounts and in token of receipt, he made entries of the deposits in the respective pass-books and also initialled all the relevant entries. The amount so received was not accounted for by the accused in the accounts of the Post Office by showing deposits in the various records and misappropriated the entire sum of Rs. 10,520/- deposited by the aforesaid two persons. Thus the accused has committed the offence of criminal breach of trust.

3- The accused denied all the allegations levelled against him and pleaded not guilty. He denied having received the money in question and having made the entries in the pass books. According to him he has been falsely implicated in the case on account of village party-politics and at the instance of the post office officials.

4- The prosecution in support of its case produced P.W.1 Ravinder Kumar Singh, P.W.2 Udai Vir Singh, both account holders and whose money was misappropriated by the accused, P.W.3 Ram Lal Juneja Sub Post Master of Sub Post Office Ruhana Kalan, Muzaffarnagar, P.W.4, Satnar Rai Suchdev, Senior Superintendent of Post Office, Muzaffarnagar, P.W.5, Amar Singh handwriting expert and P.W.6, R.K. Bhalla, the Investigating Officer.

5- The accused in his defence examined the handwriting expert Sri Virendra Pal Singh as D.W.1.

6- The learned Special Judge on hearing learned counsel for the parties and going through the evidence on record, found the accused/appellant guilty of the offence U/S 409 I.P.C. and Section 5(1)(C) read with Section 5(2) of Prevention of Corruption Act and accordingly sentenced him.

7- Feeling aggrieved, the accused/appellant has preferred this appeal before this Court.

8- I have heard the learned counsel for the parties and have gone through the evidence on record.

9- The learned counsel for the appellant has submitted before me that the account holders had deposited the disputed sums with the Sub Post Office Muzaffarnagar and the accused who was post master at Post Office Badhai Kalan did not receive the same. The accused also did not make disputed entries in the pass-books and he has been falsely

implicated in the case due to party-bandi and with connivance of departmental employees.

10- The learned counsel appearing on behalf of the respondent has opposed the above submission and argued that on the relevant dates the accused/appellant was the Post Master at Post Office Badhai Kalan, and he received the disputed sums from the depositors but he did not account for the same with the post office and thereby committed criminal breach of trust. He further alleged that from the depositions of the depositors as well as report of handwriting expert the offences are made out against the accused/appellant.

11- After having considered the submissions raised by the learned counsel for the parties and having gone through material on record, I am of the view that the submission raised by the learned counsel for the accused/appellant has no force.

12- Perusal of record reveals that Sri Ravinder Kumar Singh and Sri Udai Vir Singh are the Saving Bank Account holders in Post Office Badhai Kalan, District Muzaffarnagar and they were allotted the account numbers 655871 and 655872 respectively. Both these witnesses have been produced by the prosecution as P.W.1 Ravinder Kumar Singh and P.W.2 Udai Vir Singh. P.W.1 Ravinder Kumar Singh has deposed that he had entrusted to the accused Rs. 1000/- on 25.1.1983, Rs. 600/- on 31.3.1983, Rs. 1000/- on 2.4.1983 and Rs. 600/- on 15.4.1983 for being deposited in his account. He further proved that the accused made entries of the aforesaid deposits in his pass-book, Material Ext. 1 in token of

the receipts. This witness also proved the entries Ext. Ka.9, Ext. Ka.9/1, Ext. Ka.9/2, and Ex.Ka.9/3 in his pass book to be in the handwriting of accused Atma Ram. Likewise P.W.2, Udai Vir Singh is the account holder of account No. 655872. This witness has deposed that he had handed over to the accused Rs. 5000/- on 7.1.1983, Rs. 300/- on 5.2.1983, Rs. 1020/- on 30.4.1983 and Rs. 1000/- on 7.5.1983 for being deposited in his aforesaid account. This witness has also stated that the accused made entries Ext. Ka.10, Ext. Ka.10/1, Ext. Ka. 10/2, and Ex. Ka.10/3 in his pass book, Material Ext. 2. He further alleged that the accused also signed and affixed the seal of the post office against each entry. It is also noteworthy that no plausible reason has been shown in the cross-examination of these witnesses as to why they will falsely tell against the accused/appellant Atma Ram.

13- The testimony of the above two witnesses is further corroborated by the deposition of P.W.3, Ram Lal Juneja who is the Sub-Post Master of Sub Pot Office Ruhana Kalan, Muzaffarnagar. He has stated that Ruhana Kalan is the accounts office of the branch Post Office of Badhai Kalan, where the accused was posted as the extra departmental Sub Post Master. According to this witness the accused used to handle the entire account of the Badhai Kalan Branch. He has also identified the writing of the accused on the pass books Mat. Exts. 1 and 2. He has also proved the relevant entries in daily account sheets of Dabhai Kalan Post Office, and Savings Bank General and the B.O. account of all the relevant dates. He also testified that the amounts in question deposited by the two account-holders were

not reflected by the accused in the account books of the branch Post Office Badhai Kalan and thus, he had misappropriated the entire amount.

14- P.W.4, Sri Satnar Rai Suchdev, Senior Superintendent of Post Office, Muzaffarnagar has proved the sanction Ext. Ka.23 for prosecution of the accused/appellant.

15- It is also relevant to mention here that the disputed writings Ext. Ka.9, Ka.9/1, Ka.9/2, Ka.9/3, Ka.10, Ka.10/1, Ka.10/2 and Ka.10/3, along with specimen writings of the accused Atma Ram were sent for expert opinion to the handwriting expert. Sri Amar Singh, P.W.5, is the handwriting expert, who has found the disputed writings to be written by the person whose specimen writings were sent to him for expert opinion. D.W.1, Bijendra Pal Singh handwriting expert produced by the accused in his defence, although in his evidence has stated that the disputed writings are not of the accused Atma Ram, but his testimony is not trustworthy in the facts and circumstances of the case. This witness in his report Ext. Kha.1 has admitted that the natural variations occur in different handwritings of bonafide writers, therefore the natural variations appearing in the disputed writings do not alter the position favourable to the accused. Here it may also be noted that although the accused/appellant has taken the defence that he has been falsely implicated due to party-politics of the village and by the employees of postal department, but he has not adduced any evidence to prove his allegation in this regard. As submitted by the learned counsel for the appellant, there does not arise question of deposit of disputed

sums with Sub Post Office Ruhana, as the witnesses/depositors have specifically deposed that they had entrusted the money to the accused/appellant at Badhai Kalan branch and the accused had made entries and put seal of the Post Office against each entry. I find that the prosecution has been able to prove its case against the accused/appellant beyond all reasonable doubts.

16. Learned counsel for the appellant also submitted that the F.I.R. in the case has been lodged with much delay and delay in lodging the F.I.R. is fatal to the prosecution. He also alleged that the public witnesses P.W.1 and P.W.2 are brothers and their evidence should not be relied upon.

17. I find no substance in the above submissions also. So far as the delay in lodging the F.I.R. is concerned, the accused/appellant had received the money from the depositors in the months of January, February, March and April 1983 and the F.I.R. was lodged on 9.1.1984 with the C.B.I., S.P.E. Dehradun. P.W.4, Satnam Rai Sachdev has deposed in his statement that Branch Post Office Badhai Kalan is single handed post office and the accused was the only person posted there. He alleged that when it came to his knowledge that the accused did not deposit the disputed amounts with the post office, then the F.I.R. was lodged. In these types of cases, the delay in lodging the F.I.R. do not have much relevance.

18- As far as the reliability of the P.W.1 and P.W.2, is concerned, both these witnesses seem to be reliable and natural witnesses. The relationship do

not affect their testimony. Their testimony is also supported by the relevant entries made in their passbooks and there remains no scope for the element of false implication in the testimony where documentary evidence is supporting the facts.

19- For the foregoing reasons I am of the considered view that the accused/appellant has committed criminal breach of trust and he is also guilty of corruption, therefore, he has rightly been held guilty by the trial Court for the offences U/S 409 I.P.C. and Section 5 (1) (C) read with Section 5(2) of the Prevention of Corruption Act and I do not find any ground to interfere in the impugned judgment and order passed by the learned Special Judge.

20- In the result the appeal lacks merit and is hereby dismissed. The impugned judgment and order dated 13-2-86 passed by the learned Special Judge is hereby confirmed.

21- The accused/appellant is on bail. His bail bonds are cancelled and sureties discharged. He be taken into custody to serve out the sentence awarded to him by the trial Court.

22- Let the record be sent to the court concerned for compliance.

(B.C. Kandpal,J.)